

PROGRAMME ARRANGEMENT (PA) No A- PROJ.GEN.558 [CFM]

BETWEEN
THE MINISTRY OF DEFENCE OF BELGIUM
AND
THE MINISTRY OF DEFENCE OF BULGARIA
AND
THE MINISTRY OF DEFENCE OF CYPRUS
AND
THE MINISTRY OF DEFENCE OF FRANCE
AND
THE MINISTRY OF DEFENCE OF GERMANY
AND
THE MINISTRY OF DEFENCE OF GREECE
AND
THE MINISTRY OF DEFENCE OF ITALY
AND
THE MINISTRY OF DEFENCE OF HUNGARY
AND
THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA
AND
THE MINISTRY OF DEFENCE OF MALTA
AND
THE MINISTRY OF DEFENCE OF NETHERLANDS
AND
THE MINISTRY OF DEFENCE OF POLAND
AND
THE MINISTRY OF DEFENCE OF PORTUGAL
AND
THE MINISTRY OF DEFENCE OF ROMANIA
AND
THE MINISTRY OF DEFENCE OF SLOVENIA
AND
THE MINISTRY OF DEFENCE OF SPAIN

THE EUROPEAN DEFENCE AGENCY
AND
THE EUROPEAN INVESTMENT BANK

REGARDING THE

COOPERATIVE FINANCIAL MECHANISM PROGRAMME

“CFM PROGRAMME”

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Introduction

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THE MINISTRY OF DEFENCE OF SPAIN

hereinafter referred to as the “CFM Members”:

THE EUROPEAN DEFENCE AGENCY, hereinafter referred to as “EDA”

THE EUROPEAN INVESTMENT BANK, hereinafter referred to as “EIB”

- taking into account the Treaty on European Union, in particular Articles 42.3 and 45 thereof, the Treaty on the Functioning of the European Union (TFEU), in particular Articles 308 and 309 thereof, and the Statute of the European Investment Bank;
- recalling that Article 125 of the TFEU provides that neither the European Union nor any of its Member States, respectively, will be liable for or assume the commitments of any other Member State;
- taking into account the Council Decision (CFSP) 2015/1835 of 12 October 2015 defining the statute, seat and operational rules of the EDA¹ and in particular Chapter IV which refers to the management of ad hoc projects or programmes and associated budgets;
- taking into account the Council Decision (EU) 2016/1353 of 4 August 2016 concerning the financial rules of the European Defence Agency and repealing Decision 2007/643/CFSP;²
- taking into account the December 2013 European Council Conclusions’ call for incentivising defence cooperation by developing incentives for and innovative approaches

¹ OJ L 266, 13.10.2015, p.55

² OJ L 219, 12.08.2017, p.98.

to defence cooperation, including by investigating non market-distorting measures;

- taking into account the EDA Steering Board Decision (SBD) 2017/11 of 18 May 2017 approving the establishment of a Cooperative Financial Mechanism (“CFM”) as an EDA ad hoc Cat. A Programme;
- considering that the CFM Programme was established in order to support cooperative projects under Council Decision (CFSP) 2015/1835 and to address concerns of participating Member States regarding, inter alia, cases where unsynchronised defence-budgets hinder or impede the launch or implementation of such projects;
- considering that the EIB is the Bank of the European Union with a mandate defined in Article 309 of the TFEU to support investments consistent with EU policy objectives;
- noting that the participation to and use of the CFM Programme is entirely based on the principle of voluntary financial assistance and does not release the CFM Members from their obligation to exercise budgetary discipline;
- underlining that the use of the CFM Programme and the provision of financial support does not imply the transfer or assumption of debt from one CFM Member to another; and
- acknowledging that financial support provided under the CFM Programme will be subject to the conditions and requirements set under this Programme Arrangement;

have agreed the following concerning this Cat. A Programme hereinafter referred to as the:

“CFM Programme”

PART I – COMMON PROVISIONS

Section 1 - Definitions

For the purpose of this Programme Arrangement (“PA”), the following terms and acronyms, (if not otherwise defined herein) have the definitions set forth in the table below:

Beneficiary CFM Member	A CFM Member benefitting from the financial support under the CFM Programme.
Capability Development Plan	The overall strategic tool set up by EDA pMS in order to define future capability needs from the short to longer term, as it now stands and as it develops in the future.
CFM Member	EDA pMS or a Third Party or in each case their respective duly authorised borrowing entity / agent who entered into this PA.
CFM Programme	EDA Cat. A programme entitled “Cooperative Financial Mechanism”, established pursuant to Article 19 of the EDA Council Decision and governed by this PA.
EDA Council Decision	Council Decision (CFSP) 2015/1835 of 12 October 2015 defining the statute, seat and operational rules of the European Defence Agency.
EDA Financial Rules	Council Decision (EU) 2016/1353 of 4 August 2016 concerning the financial rules of the European Defence Agency and repealing Decision 2007/643/CFSP.
EDA pMS	EDA participating Member States pursuant to Article 3 of the EDA Council Decision.
EDA Steering Board	The Steering Board established under Article 8 of the EDA Council Decision.
Management Board (“MB”)	The CFM Programme management board set up by EDA Steering Board Decision (SBD) 2017/11 of 18 May 2017.
PA	The present programme arrangement.

Supporting CFM Member	A CFM Member providing financial support under the CFM Programme.
Third Party(ies)	Third countries with which EDA has entered into an administrative arrangement in accordance with Article 26 of the EDA Council Decision.

Section 2 - Objectives and scope

- (1) The CFM Programme is a tool to support cooperative projects, in line with Article 5 of the EDA Council Decision, inter alia where unsynchronised defence-budgets hinder or impede the launch or implementation of such projects.
- (2) The scope of the CFM programme covers cooperative projects addressing topics and areas of activity referred to under Article 5 of the EDA Council Decision (“Functions and tasks”).
- (3) The MB will set an indicative and non-exhaustive list of cooperative projects, based on the Capability Development Plan, which could be supported by the CFM Programme. Such a list will be updated by the MB on an annual basis.

Section 3 - Participation

- (1) The CFM Programme is open to EDA pMS and to Third Parties as defined at Section 1.
- (2) All CFM Members are entitled to request financial support from the CFM Programme, as stipulated in this PA.
- (3) Notwithstanding any financial support granted under the CFM Programme, projects or programmes subject to such financial support will remain at all times governed and managed according to their own rules.

Section 4 - CFM mechanism

- (1) The CFM Programme establishes the legal framework for a financial support mechanism stemming from two distinct sources:
 - a) the EIB support mechanism, as defined under Part II to this PA, and
 - b) the State-to-State support mechanism, as defined under Part III to this PA.
- (2) The common provisions set out under this Part to the PA will apply to both support mechanisms under Section 4.1 (a) and (b) above.

- (3) The cost of the management of the CFM Programme (administrative and operational costs) will be covered by the existing resources within EDA. There will not be additional costs for the management of the CFM Programme on behalf of the CFM Members.

Section 5 - Management Board

- (1) The MB, as defined under Section 1 to this PA, is composed of representatives of each CFM Member, a representative of (i) the EIB, and (ii) EDA the latter having no voting rights. Each CFM Member and the EIB may designate an alternate in the event of unavailability of the designated representative.
- (2) The representatives and their alternates will be notified to EDA, at the latest, upon signature of the PA. In line with Section 27 changes in the designated representatives and alternates will not require an amendment but will be notified in writing to EDA and circulated for information to the MB members.
- (3) The MB will meet at least once a year, but may convene more frequently, upon request from one or more CFM Members or the EDA.

PART II – EIB SUPPORT

Section 6 - Definitions

In addition to the Definitions under Section 1 to this PA, the following definitions will apply for the purposes of this Part:

Facility Agent	The EDA. The Facility Agent role is described in Section 7
Eligible project-related costs	The sum of all elements of a project investment which comply with EIB policy and rules.
Loan Agreement	A loan agreement is a bilateral contract between a CFM Member and the EIB in relation to a project, which sets out the terms and conditions for providing finance including, inter alia, loan volumes, interest rates, repayment terms and other undertakings and conditions.

Project Assessment Mechanism	The mechanism, agreed between EDA and EIB, used by the Facility Agent to assess, on a case by case basis jointly with the EIB, if, from a technical perspective a project meets the EIB's eligibility criteria for financing under the conditions of the CFM Programme.
Project Completion Report	A report to be made by EDA to EIB about the completion of a project under the CFM Programme.
Project Progress Report	A report to be made by EDA to EIB about the ongoing progress of a project under the CFM Programme.

Section 7 - EDA acting as Facility Agent

- (1) For financial support provided in accordance with this Part, the EDA will act as the Facility Agent on behalf of EIB under its instructions and responsibility.
- (2) In that sense, EDA will assume an administrative and technical role in relation to the Loan Agreement serving as a primary point of contact between the EIB and the Beneficiary CFM Member in the technical assessment of the feasibility of each project for financing by the EIB, managing the flow of communication between the two parties.
- (3) In particular, the Facility Agent will:
 - a) Facilitate the identification of projects of CFM Members which could be eligible to receive EIB support;
 - b) Assess requests following the Project Assessment Mechanism and submit a report to the EIB including a recommendation indicating whether the project meets the eligibility criteria to receive EIB support or not;
 - c) confirm to EIB that the sum of EIB support to all CFM Members having requested support does not exceed 50% of eligible project costs.

Section 8 - EIB support mechanism

- (1) Financial support provided by the EIB under the CFM Programme is open to CFM Members which are also EDA pMS meeting the following conditions:
 - a) the CFM Member requesting support has signed a Loan Agreement with the EIB, dedicated to support projects in the field of Defence and Security;

- b) the project requiring support is in line with the mandate of the EIB and its lending objectives under the TFEU and the EIB Statute as assessed under the eligibility criteria established by the EIB and verified by EDA, as the Facility Agent;
 - c) the project requiring support is a collaborative project to which at least two EU Member States contribute;
 - d) the amount of EIB support for the project will not exceed 50% of total eligible project-related cost;
 - e) in case of co-financing with State-to-State support under Part III of this PA, the sum of the EIB support and the State-to-State support shall not exceed 70% of a CFM Member's contribution to eligible project costs.
- (2) Once a Loan Agreement is signed, the CFM Member seeking financial support for a project will send a request for allocation to the EIB and to EDA, acting as the Facility Agent in accordance with Section 7 to this PA.
- (3) EIB financing, including approval of allocations for projects, will be managed in accordance with EIB own rules and procedures.

Section 9 - Payments

Payments will be agreed between the EIB and the Beneficiary CFM Member and will be made in accordance with EIB own rules and procedures.

Section 10 - Reporting

Every year the EDA will provide to EIB a progress report on projects financed under this Part which will include:

- a) All relevant information relating to the Project, the relevant CFM member for due diligence purposes;
- b) Notices of any material changes to or in connection with the Project, and / or the relevant CFM member and structural changes thereto; and
- c) Any fact or event that may reasonably likely to prevent the substantial fulfilment of the relevant CFM member's obligations.

Section 11 - Liabilities

- (1) The EIB will have sole direct recourse against the CFM Member as borrower and in its

capacity as guarantor of the Loan.

- (2) EDA as Facility Agent will not:
- a) be liable (including for negligence or any other category of liability whatsoever) for any action taken or omitted to be taken or for any loss resulting from their actions or their performance or lack of performance of their duties under or in connection with the Loan Agreement or the transactions contemplated thereunder (except for its own gross negligence or willful misconduct) or
 - b) be responsible in any manner to any third party for any recital, statement, representation or warranty made by the Beneficiary CFM Member, or any officer thereof, contained in the Loan Agreement, or in any certificate, report, statement or other document referred to or provided for in, or received by it under or in connection with, the Loan Agreement or the validity, effectiveness, genuineness, enforceability or sufficiency of the Loan Agreement, or for any failure of the Beneficiary CFM Member to perform its obligations hereunder or thereunder (except for its own gross negligence or willful misconduct).
- (3) In no event will the Facility Agent be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to loss of profit, goodwill, reputation, business opportunity or anticipated saving).
- (4) The Facility Agent will not be under any obligation to any party to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, the Loan Agreement or to inspect the properties, books or records of the Beneficiary CFM Member, any other holder of equity interests in the Beneficiary CFM Member.

PART III – STATE-TO-STATE SUPPORT

Section 12 - Definitions

In addition to the definitions under Section 1 to this PA, the following definitions will apply for the purposes of this Part:

CFM Investment Tool	The account through which Deferred Payments and Reimbursable Advances agreed in accordance with the terms of this part are made.
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Contributions	Monetary contribution made by CFM Members to the CFM Programme and deposited in their Individual Bank Account.
Deferred Payment	The payment to be made to the CFM Investment Tool by a Beneficiary CFM Member following the execution of a Request for Support (RfS).
Final Payment Date	The date at which a Supporting CFM Member may request the Advisory Panel to confirm its claim in accordance with the provisions under Section 23.
Individual Bank Account	Bank account opened and managed by the EDA for each CFM Member.
Reimbursable Advance	An advance of funds, within the CFM Programme, transferred by EDA from the Supporting CFM Member's Individual Bank Account to the Beneficiary CFM Member's Individual Bank Account through the CFM Investment Tool following an arrangement signed according to the template provided under the Annex to this PA.
Request for Support (RfS)	A written request leading to the conclusion of an arrangement (following the template under the Annex to this PA) signed between the Supporting CFM Member, the Beneficiary CFM Member and the EDA, having the purpose (i) to record the transfer of the funds from the CFM Investment Tool to a Beneficiary CFM Member as a Reimbursable Advance, (ii) to define the timelines and conditions for Beneficiary CFM Member to make a Deferred Payment and (iii) to defined terms and conditions for all Parties to the arrangement.

Section 13 - General requirements

- (1) The provision of financial support under this Part will be done with due consideration to the general requirements set out hereunder:
 - a) Decisions on whether to grant potential financial support will be taken by each CFM Member, at their sole discretion, on a case-by-case and project-by-project basis.
 - b) The activities under the CFM Programme do not constitute measures of monetary

policy.

- c) The CFM Programme will meet ad hoc financing requirements of individual CFM Members, in relation to cooperative research and capability projects, when such CFM Member temporarily lacks funding, e.g.:
 - pending the adoption of a proposed national budget which can reasonably be expected to appropriate funds for the project in question;
 - due to the application of fiscal or budgetary rules whereby funds deemed to finance such project in a national budget cannot be released by the date due for the payment of contributions set by the arrangement governing the project in question;
 - if unexpected budget cuts reduce or cancel allocation of funds originally foreseen for the project in question, provided that subsequent national budgets are reversed at the latest before the completion of the project funded; or
 - if a national budget fails to foresee appropriations for the project in question due to an unexpected shortage of financial resources, provided that subsequent national budgets can reasonably be expected to reverse these cuts.
- d) A Beneficiary CFM Member will remain fully responsible for its commitments to its creditors both in the context of the project in question and in relation to its national debt.
- e) The CFM will not address any financing requirements, if doing so would adversely affect a CFM Member's ability to follow a sound budgetary policy.
- f) The possibility to give financial support will only be considered if the MB finds that the common performance of the project is of mutual interest.
- g) The possibility to give support or to receive support will be limited to those CFM Members party to the same project/programme for which financial support is needed in accordance with Section 15(3).
- h) A CFM Member asking for support under the CFM can only request the nominal amount that is strictly necessary for the realisation of the project/programme for which financial support is requested.
- i) A CFM Member should not receive financial support through this Part when its

regular access to market financing is impaired or is at risk of being impaired.

- j) The condition of the support should correspond to the extent possible to the regular market conditions.
 - k) The Beneficiary CFM Member should not be financially in a better position than it would be if it paid in time with its own financial means.
 - l) The Beneficiary CFM Member should provide appropriate securities to the Supporting CFM Member. These securities will be set out in detail in the RfS signed between the Supporting CFM Member, the Beneficiary CFM Member and EDA;
 - m) in case of state to state support and in case of co-financing with EIB support under Part III of this PA, the total sum of the support shall not exceed 70% of a CFM Member's contribution to eligible project costs.
- (2) Financial support provided by a Supporting CFM Member through the CFM programme does not imply the assumption by that Supporting CFM Member of joint liability for any debt incurred by the Beneficiary CFM Member. Such support will not affect the contractual relations that may exist between the Beneficiary CFM Member and external parties (e.g. contractors used in project/programmes supported under the CFM Programme), in particular, it will not discharge the Beneficiary CFM Member from its obligations towards those external parties. The arrangement signed between the Supporting CFM Member, the Beneficiary CFM Member and EDA will contain a provision to this end.
- (3) Irrespective of the scope of the CFM Programme as stipulated in Section 2 (2) above, each CFM Member may decide to limit the scope of its participation to certain types of projects. In such case, the CFM Member would inform the EDA and the other CFM Members, in writing, of the imposed limitations and their potential duration.

Section 14 - Structure of the State to State mechanism

- (1) The “State-to State” support mechanism under this Part is structured around:
 - a) Individual Bank Accounts, and
 - b) the CFM Investment Tool.
- (2) The Individual Bank Accounts and the CFM Investment Tool are managed by the EDA, in line with Section 16, 18 and the EDA Financial rules and procedures. The Individual

Bank Accounts will remain under the full control of each CFM Member, which decides on the use of its Contributions, subject to the limitations set out under Section 15.

Section 15 - The support mechanism

- (1) A CFM Member may request a Reimbursable Advance from the CFM Programme by issuing a RfS, in line with the template provided under the Annex to this PA and subject to the requirements set out under Section 16 to this PA.
- (2) A CFM Member cannot be obliged to support a project with the resources it has committed to its Individual Bank Account if it does not wish to do so. In addition, each CFM Member may decide to allocate resources within the CFM Programme to cover, in whole or in part, their agreed Contributions to another project.
- (3) For the support mechanism to be activated the following requirements must, at least, be fulfilled:
 - a) For a CFM Member to submit a RfS, it has to be a contributing Member to both the CFM programme and the specific programme/project affected by its temporary shortfall in resources.
 - b) For a CFM Member to agree to a RfS it must also be a contributing Member both to the CFM Programme and to the specific programme/project for which the RfS is submitted.
- (4) The CFM Member submitting a RfS must not have exceeded the threshold set up under Section 17(2) b). The RfS will be forwarded to EDA, which, pursuant to Section 18(2), will pre-screen the RfS to determine whether it falls under the scope of the CFM Programme and provide the MB with the outcome of its pre-screening.
- (5) Once the MB has considered the RfS as falling under the scope of the CFM Programme as defined under Section 2(1), and verified that it meets the requirements set out above in Section 15(3), EDA will transmit the RfS and information on the required level of support to the other CFM Members.
- (6) CFM Members will decide, on a case by case basis, whether to provide the requested support and to sign an arrangement in line with the template under the Annex to this PA indicating the amount of funds to be released, via the CFM Investment Tool, to the Beneficiary CFM Member in question, as well as the related conditions for such release in accordance with EU and national regulations, in particular with national budgetary

law.

- (7) Once agreed, the arrangement concluded in line with the template under the Annex to this PA will be signed by the Supporting CFM Member(s), the Beneficiary CFM Member and the EDA.
- (8) As of the date of the last signature of the related arrangement, as stipulated above, and within 30 days at the latest, the EDA will release the funds from the Individual Bank Account of the Supporting CFM Member to the CFM Investment tool and from there to the Individual Bank Account of the Beneficiary CFM Member having requested a Reimbursable Advance.
- (9) The Beneficiary CFM Member will commit to refund the Reimbursable Advance, in full, by the date stipulated in the signed RfS from its Individual Bank Account to the Individual Bank Account of the Supporting CFM Member.
- (10) The EDA will monitor matters to ensure that the CFM Members fulfil their obligations as stipulated in the relevant RfS. In the event that a breach of obligations by one of the CFM Members has occurred, under a signed arrangement, the EDA will promptly inform the affected CFM Members and the MB, as appropriate.
- (11) The Beneficiary CFM Member may request the target date to be postponed if it reasonably expects to be unable to reimburse its Deferred Payment by the said target date. The MB will only grant such postponement if the Supporting CFM Member agrees thereto. The target date for repayment of a Reimbursable Advance may only be postponed once.
- (12) If the Beneficiary CFM Member fails to reimburse the agreed Reimbursable Advance to the CFM by the target date or, as the case may be, the postponed target date, the EDA will make the necessary effort to expedite such reimbursement. In that sense, the EDA may propose the use of Section 23.
- (13) The Supporting CFM Member may pursue the claim through bilateral channels, the mechanism as set out under Section 23 or the dispute settlement provisions under Section 29.
- (14) A Beneficiary CFM Member that has breached its obligations under a signed arrangement in respect of Deferred Payment, may not request new or additional support from the CFM Programme until the breach has been rectified to the full satisfaction of the affected

Supporting CFM Member.

Section 16 - Contributions and use thereof

- (1) CFM Members will participate and contribute to the CFM Programme on a voluntary basis, with no obligation to make initial or periodic payments, decide to support projects or programmes within the CFM on a case-by-case and project-by-project basis, and submit conditions to the scope of their participation in the CFM Programme as required in order to comply with their national legislation;
- (2) Contributions will be made in EUROS.
- (3) Based on the indicative and non-exhaustive list of projects established by the MB pursuant to Section 2 (3), the EDA will issue, in the 1st quarter, an annual estimate of Contributions needed to cover the financial requirements of the projects. CFM Members wishing to make a Contribution will make their payments into Individual Bank Accounts. CFM Members are free to determine, at any time, if they wish to transfer additional Contributions to their Individual Bank Account.
- (4) Contributions can be used either as:
 - a) Reimbursable Advances through the CFM Investment Tool after signature of the related arrangement between the Supporting CFM Member, the Beneficiary CFM Member and EDA, or
 - b) as a source for financing a CFM Members' own commitment falling under the scope of the CFM.

In the case of subparagraph b) the CFM Member will notify EDA in writing 14 days before the requested date of the transfer and will provide the EDA with all necessary information to make the transfer.

- (5) The terms and conditions governing the CFM Investment Tool for each Reimbursable Advance and Deferred Payment will be stipulated in a specific arrangement concluded following a RfS, in line with the template under the Annex to this PA.
- (6) Each CFM Member may withdraw all or part of its Contributions from the CFM Programme by informing the EDA in writing. The EDA will transfer the Contributions which are not bound as Reimbursable Advances or as a source for financing a CFM Member's own commitment to the CFM Member in question 14 days after having

obtained the withdrawal notification.

- (7) In the event of termination of a CFM Member's participation in the programme, the provisions of Section 28 will apply.

Section 17 - Role of the Management Board

- (1) Designated MB representatives and their alternates will be duly authorised, in accordance with their national staffing processes, to act on behalf of the CFM Members regarding the commitment of financial support, including the negotiation and approval of arrangements concluded in line with the template under the Annex to this PA, and the relevant transfers through the CFM Investment Tool.
- (2) For the purposes of this Part, the MB will:
- a) consider whether a RfS falls under the scope of the CFM Programme as defined under Section 2 (1);
 - b) monitor the RfS submitted per CFM Member with a view to ensuring that a maximum threshold of on-going RfS is not exceeded at any given point. This threshold corresponds to 20% of that CFM Member's defence investment expenditure as set, where relevant, in accordance with commitment no. 2 subscribed to in the context of establishing Permanent Structured Cooperation (PESCO) and specified in that CFM Member's National Implementation Plan (Article 3(2) of Council Decision (CFSP) 2017/2315 of 11 December 2017 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States.
 - c) grant, subject to the Supporting CFM Member's approval, a postponement in the repayment of a Reimbursable Advance in accordance with Section 15(11);
 - d) supervise the management of the Contributions by EDA;
 - e) assist, as appropriate, in the settlement of disputes pursuant to Section 29;
 - f) update annually the indicative and non-exhaustive list of projects which can be supported; and
 - g) approve the annual accounts and the final financial report, as appropriate.
 - h) agree to modifications made to non-essential parts of the template arrangement contained in the Annex to this PA.

- (3) The MB will reach its decisions by consensus. The amount of Contributions of CFM Members to the CFM will not confer any additional rights to CFM Members in the MB.
- (4) The MB will be disbanded after the termination of the CFM Programme.

Section 18 - Role of EDA

- (1) The EDA will manage the Individual Bank Accounts and the CFM Investment Tool under the supervision and control of the MB.
- (2) In addition, the EDA will provide support to the MB, including:
 - a) pre-screening of RfS and preparation of the information necessary for the MB to consider the RfS; and
 - b) following the MB's consideration of whether the RfS falls under the scope of the CFM Programme (i) indicating the level of the Contributions and the availability of funds; (ii) identifying potential matches between budgetary availability and budgetary shortfall in the CFM Members.
- (3) the EDA will organise Reimbursable Advances and Deferred Payments to be performed in accordance with Section 15 and, as appropriate, prepare the related arrangement between CFM Members, in line with the template under the Annex to this PA.
- (4) The EDA will open and manage the Individual Bank Accounts following the instructions of the CFM Members.
- (5) The Chief Executive of the EDA will act as the Authorising Officer for financial transfers and payments made under the CFM Programme.
- (6) The EDA will prepare the annual accounts in accordance with Section 20(2) for submission to the MB for approval, as provided under Section 17(2) g);
- (7) The EDA will manage and supervise the implementation of arrangement concluded following a RfS, in line with the template under the Annex to this PA, including the effective payment of Reimbursable Advances and Deferred Payments to be performed in execution of the said arrangement.

Section 19 - Payments

- (1) Any payments associated with the implementation of the CFM Programme will be managed by the EDA in accordance with the EDA Financial Rules.

- (2) The EDA will administer the CFM Programme in accordance with the provisions of the EDA Financial Rules, Title V.
- (3) Article 47.3 of the EDA Financial Rules will apply to the management of all Contributions to the CFM Programme to ensure sound financial management and control.
- (4) Any positive or negative interest generated in an Individual Bank Account will remain in the said Individual Bank Account and will accrue to the relevant CFM Member.
- (5) Any interest generated in the CFM Investment Tool will be divided between the CFM Members in proportion to their Contributions to the Investment Tool.

Section 20 - Reporting

- (1) The EDA will provide, upon request of a CFM Member, a statement of its net position in the relevant Individual Bank Account.
- (2) The EDA will prepare the annual accounts to be signed by the EDA's Chief Executive, audited by the EDA College of Auditors and submitted for approval to the MB, in accordance with the EDA Council Decision and the EDA Financial Rules. Such annual accounts will ensure full traceability of all financial transactions executed on Individual Bank Account.
- (3) After termination of this PA, the EDA will produce a final financial report once the audit of the last annual report by the College of Auditors has been completed, detailing revenue and expenditure for the duration of the CFM Programme and the final balance of the Individual Bank Accounts. The final financial report will be submitted to the MB for approval.

Section 21 - Auditing

- (1) The EDA College of Auditors will be entrusted, in accordance with Article 43 of the EDA Financial Rules, with the audit of the activities conducted under this Part.
- (2) National audit authorities of a CFM Member may, upon request, at their own cost and without infringing on the rights of the other CFM Members or the responsibilities of the EDA College of Auditors, obtain information and inspect any documentation, including at the EDA premises, that they deem necessary for auditing their respective national share or reporting to government or parliament.

Section 22 - Claims and liabilities

- (1) Supporting CFM Members are bound by the terms of their Reimbursable Advance obligations to which they have committed under an arrangement, concluded in line with the template under the Annex to this PA.
- (2) Beneficiary CFM Members are bound by the terms of their Deferred Payments obligations to which they have committed under an arrangement, concluded in line with the template under the Annex to this PA.
- (3) CFM Members acknowledge that the CFM Programme's capacity to pay Reimbursable Advances in execution of an arrangement is strictly dependent on the satisfaction by Beneficiary CFM Members of their Deferred Payment obligations under the relevant arrangement.
- (4) CFM Members hereby expressly waive any and all rights to claim the payment of Reimbursable Advances or Deferred Payments against the EDA.
- (5) The EDA will not be held liable if a CFM Member breaches its commitments under the CFM Programme. Furthermore, CFM Members hereby agree to hold the EDA harmless from any and all claims or liability for any loss or damage sustained arising out of or associated in any way with its tasks as manager in line with the provisions of this PA, except where such loss or damage arises from wilful misconduct or gross negligence.
- (6) The EDA rules of governance are not affected by the provisions in this PA.

Section 23 - Advisory Panel

- (1) For the purposes of this Part and subject to the conditions specified in Section 15 a Supporting CFM Member may request the use of the provisions of this Section to confirm its claim and to determine the Final Payment Date thereof.
- (2) In the event of a request by a Supporting CFM Member the MB will appoint an advisory panel.
- (3) This advisory panel will be composed of three experts from CFM Members, proposed by the MB and accepted by the Supporting CFM Member and Beneficiary CFM Member, formalised in a decision of the MB.
- (4) The advisory panel will review the Supporting CFM Member's claim as well as its request regarding the Final Payment Date; it will consider the Beneficiary CFM Member's related

submissions. It will reach its advice primarily on the basis of applicable European Union law.

- (5) The MB will confirm the claim and determine the Final Payment Date based on the advice given by the advisory panel. The MB may determine such modalities of payment as requested by the Beneficiary CFM Member and agreed to by the Supporting CFM Member.

PART IV – FINAL PROVISIONS

Section 24 – Admission of new CFM Members

- (1) The admission of any EDA pMS or Third Party to this CFM Programme will require the unanimous decision of the CFM Members.
- (2) Following a unanimous decision of the CFM Members, the new CFM Member will be admitted to the CFM Programme and this PA will be accordingly amended in accordance with Section 27.

Section 25 – Exit from the CFM Programme

- (1) A CFM Member can exit the CFM Programme, at any time, at its own discretion. Exit from the CFM Programme will require written notice to the EDA, which will inform the MB.
- (2) Based on such written notice, the Contributions of the exiting CFM Member that are still in the relevant Individual Bank Account, and not subject to an existing arrangement, will be reimbursed to the CFM Member in question 14 days after receipt of the written notice, in line with Section 16(6).
- (3) The exiting CFM Member will meet in full its commitments by the effective date of exit. This means that the PA will remain in force for the exiting CFM Member until all existing commitments concluded under the CFM Programme have been finalised:
 - a) Deferred Payments owed by the exiting Beneficiary CFM Member will be satisfied according to the terms of the relevant arrangement and will not be accelerated unless by mutual consent of such Beneficiary CFM Member and the Supporting CFM Member.
 - b) Reimbursable Advances already agreed upon in a signed arrangement by the exiting

Supporting CFM Member but not yet paid through the CFM Investment Tool to the Beneficiary CFM Member, will be satisfied according to the terms of the relevant arrangement, unless mutually otherwise agreed between the exiting Supporting CFM Member and the relevant Beneficiary CFM Member.

- c) EIB equivalent commitments taken under Part II will be satisfied in accordance with the terms of the concluded Loan Agreement.
- (4) Any exit will entail a full renunciation of all rights and obligations arising from this PA, except for any outstanding reimbursements due. Specific arrangements will be defined between CFM Member and the EDA. EDA will execute them within a reasonable timeframe without prejudice to ongoing projects.
- (5) Any obligations arising from this PA regarding the use and disclosure of information, liability and dispute settlement will remain in effect notwithstanding termination or expiry of the PA or the exit from the CFM Programme and this PA by any CFM Members.
- (6) The EDA will close the relevant Individual Bank Account when all accounts have been settled and all Deferred Payments have been reimbursed to the relevant CFM Members.
- (7) All costs arising as a result of an exit will be borne by the exiting CFM Member, including potential bank fees due to the closure of the Individual Bank Account.

Section 26 - Disclosure and use of information

- (1) The CFM Members will decide on the appropriate level of disclosure of information relating to projects.
- (2) Notwithstanding the above provisions:
 - a) information pertaining to a CFM Member's position in the CFM Programme (on-going Reimbursable Advances and Deferred Payments or support received under Part III of this PA) regarding the ability to support RfS may be used by the MB and the EDA only to evaluate the possibilities to support another CFM Member through the CFM. Such information may not be used for any other purpose, nor is it allowed to be further disclosed with the exception of disclosure to national audit authorities, if requested, as stipulated in Section 21 (2);
 - b) information on subsequent RfSs or on support provided under Part II will be shared only between CFM Members participating to such negotiations and RfSs or receiving support under Part II.

Section 27 - Amendment

- (1) This PA may be amended at any time by the unanimous decision of the CFM Members represented at the MB and will come into effect on the date of the last signature.
- (2) Notwithstanding Section 27.1, the template arrangement in Annex to this PA may be modified by decision of the MB in accordance with Section 17.2 h) to this PA.

Section 28 - Duration, review and termination

- (1) This PA will have an unlimited duration.
- (2) Two (2) years after the coming into effect of this PA, and every five (5) years after that, the MB will perform an evaluation of the performance of the CFM Programme and, as required, an update of its annex, based on its objectives and effectiveness. The outcome of this evaluation will be submitted to the EDA Steering Board for review of the CFM Programme.
- (3) This PA may be terminated at any time by the unanimous decision of the CFM Members.
- (4) Commitments arising from this PA regarding disclosure and use of information, liabilities, disputes and contractual obligations, will remain in effect notwithstanding termination of this PA.
- (5) After termination of this PA a final financial report will be prepared and approved in line with Section 20(3) after which all funds will be reimbursed or reallocated to the respective CFM Members. The CFM Members will provide the EDA with the details required for this reimbursement or reallocation. The EDA will close all accounts once all funds have been reimbursed or reallocated as requested by the respective CFM Members.
- (6) Any interest generated in the Individual Bank Account will be proportionally allocated to the benefit of the relevant CFM Members.
- (7) Any interest generated in the CFM Investment tool will be divided among the CFM Members proportionally to their Contributions to the PA.

Section 29 - Settlement of disputes

Any dispute arising amongst the CFM Members regarding the interpretation or implementation of this PA, will first be resolved by consultation between the CFM Members, with the assistance of the MB and then, if the CFM Members are unable to reach an agreement, the EDA Steering Board.

Section 30 - Signature and coming into effect

- (1) This PA will be signed in two original versions in the English and the French language, each version being equally authoritative. The originals will be held by the EDA, with one certified true copy of each being sent to each CFM Members by the EDA within two (2) months of its deposit.
- (2) This PA will come into effect upon the date of the last signature. For those CFM Members having signed the present PA subject to subsequent approval, this PA will come into effect on the date on which they have notified, in writing, the EDA about the completion of their applicable national procedures.

« Ready to sign » version

Signatures

For the Ministry of Defence of [...]

Signature.....

Place

Date.....

Annex

**TEMPLATE FOR ARRANGEMENT
BETWEEN
SUPPORTING CFM MEMBER, BENEFICIARY CFM MEMBER
AND EDA**

BACKGROUND

The CFM Programme was established as a mechanism to financially support cooperative projects or programmes between CFM Members.

The support mechanism as set out under the Programme Arrangement (PA) No. A-XXXX [CFM] provides for the possibility to transfer funds from a Supporting CFM Member to a Beneficiary CFM Member according to terms and conditions provided in an agreement to reimburse the advance as soon as funds become available.

From the Beneficiary CFM Member's perspective, the commitment to repay shall be identified as a "Deferred Payment", whilst the reception of financial support is formalised as a "Reimbursable Advance". Terms and conditions for both Reimbursable Advance on one hand and Deferred Payment on the other hand shall be identified herein.

The present document constitutes the arrangement formalising the terms and conditions for the financial support to a CFM Member having made a Request for Support ("RfS" template in Annex to the PA) (hereinafter referred to as the "Arrangement").

The Parties to this Arrangement are:

- A) the concerned requesting CFM Member, hereafter referred to as "the Beneficiary CFM Member".
- B) the concerned supporting CFM Member, hereafter referred to as "the Supporting CFM Member".
- C) the European Defence Agency (as per Section 18 of this PA).

ARTICLE 1 - THE CONCEPT OF CFM SUPPORT

1. The Supporting CFM Member will authorise EDA to transfer the agreed amount, as specified in Article 4 hereunder, from its Individual Bank Account to the CFM Investment Tool. The EDA will then transfer that same agreed amount from the CFM Investment Tool to the Beneficiary CFM Member's Individual Bank Account, within 30 days of the date of the last signature of this Arrangement [OR on dd.mm.YYYY].
2. The support is considered a "Reimbursable Advance", meaning that the Supporting CFM

Member will be reimbursed in its entirety, once the budgetary shortfall having triggered the request for the present Arrangement has been overcome. Conditions for this reimbursement are detailed in Article 5 hereunder.

3. The Beneficiary CFM Member shall receive funds from the CFM Investment tool and commits to:
 - a) Using the financial resource for the aim it has been assigned to,
 - b) Reimbursing the Reimbursable Advance by the terms determined hereunder,
 - c) Fulfil any obligations indicated in this Arrangement.
4. The EDA will monitor and verify that the funds are used for the intended purpose. The funds received from the CFM Members may not be used for any other purpose than that which is determined in this document (as set out in Articles 2 and 3 hereunder).

ARTICLE 2 - REFERENCE DOCUMENTS

This Arrangement makes explicit reference to the following documents:

- a) CFM Programme Arrangement (PA) No. A-xxx [CFM];
- b) The supported project/programme's Programme Arrangement [insert reference]; and
- c) Any additional guidance material as agreed between the Beneficiary CFM Member and the Supporting CFM Member.

ARTICLE 3 - INTENDED USE OF CFM SUPPORT

The agreed amount, as specified in Article 4 hereunder, shall be used solely for the purpose of funding the following project/programme:

[INSERT PROGRAMME ID AND NAME]

ARTICLE 4 - AGREED AMOUNT OF SUPPORT

The EDA shall transfer the amount of € [XXX].

ARTICLE 5 - CFM REIMBURSEMENT

1. The Supporting CFM Member and the Beneficiary CFM Member have agreed the following conditions for the repayment of the Reimbursable Advance:
 - a) The Beneficiary CFM Member hereby commits to repay the Reimbursable Advance amounting to EURO [XXX] [in full/in installments of] by [XX/XX/XXXX];
 - b) The interest rate applicable to the Reimbursable Advance is XX% ;
 - c) The Beneficiary CFM Member agrees to provide securities as outlined in Article 6 below;

2. By the agreed repayment target date, the Beneficiary CFM Member shall authorise/instruct EDA to transfer the agreed Reimbursable Advance from the Beneficiary CFM Member's Individual Bank Account to the Investment Tool and from there to the Individual Bank Account of the Supporting Member States.
3. Unless a postponement of the repayment target date is agreed pursuant to Section 15 (11) of this PA, failure to meet this target date will result in:
 - a) an amicable resolution process, led by EDA, followed by b) if unsuccessful,
 - b) an escalation of the issue to the EDA Steering Board, and
 - c) use of the dispute settlement mechanism as described under Section 29 of the PA.
4. In case of delay that has not been previously agreed in accordance with Article 5.3 above, the concerned Beneficiary CFM Member that has breached its obligations under a signed RfS in respect of Deferred Payment, may not request new or additional support from the CFM Programme until the breach has been rectified to the full satisfaction of the affected Supporting CFM Member(s).

ARTICLE 6 - SECURITIES

The Beneficiary CFM Member provides the following securities to the Supporting CFM Member to secure the repayment of the Reimbursable Advance:

List of potential securities in the CFM:

- Security ownership of products designed for the beneficiary CFM Member:

Collateral could take the form of (security) ownership of products designed for the beneficiary CFM Member. The supporting CFM Member would acquire property on all or part of the goods designed for the beneficiary CFM member. The ownership of the goods will be transferred to the beneficiary CFM member when full payment of the loan has been effected.

- Prohibition of disposals:

Collateral could take the form of a prohibition of disposals, meaning that the delivery of the product would be dependent on the authorization of the supporting CFM-MS.

- Government bonds:

Collateral could take the form of government bonds which the beneficiary CFM Member is required to release to a trustee company. The bonds would then be sold on the financial market and the proceeds from the sale would be reinvested in (government) bonds (issued by Member States) with a high credit rating. The supporting CFM member would hold the collateral until the beneficiary CFM member has repaid the loan.

- Cash:

Collateral could take the form of cash. The beneficiary CFM Member would have to put an amount in cash equal to a part of the loan (e. g. 40 %) in an escrow account. The trustee

company would then invest the amount on the financial market and the proceeds from the sale would be reinvested in (government) bonds (issued by Member States) with a high credit rating.

The supporting CFM member would hold the collateral until the beneficiary CFM member has repaid the loan.

ARTICLE 7 - LIABILITY WAIVER

1. In accordance with the CFM PA Section 22(5), the EDA will not be held liable if the Beneficiary CFM Member breaches its commitments within the CFM Programme in general, and within this Arrangement specifically.
2. The Beneficiary CFM Member is exclusively liable for the respect of the commitments taken in the context of this Arrangement deriving from such requests.
3. The Parties to this Arrangement are exclusively liable for the respect of the obligations taken in the context of this Arrangement.
4. The Supporting CFM Member hereby expressly waives any and all rights to claim the repayment of Reimbursable Advances agreed under this Arrangement against the EDA as manager of the CFM Programme.
5. Pursuant to Section 29 of the PA, disputes regarding Deferred Payments and interest rates applicable (as specified under Article 5.1 above) will be addressed to the CFM Management Board or EDA Steering Board levels in order to be settled amicably.

SIGNED,

On behalf of the

On behalf of

On behalf of

European Defence Agency,

[Beneficiary CFM Member]

[Supporting CFM Member]

Jorge DOMEQ

[Name and title]

[Name and title]

EDA Chief Executive

Date

Date

Date